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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NA LEI ALII KAWANANAKOA, a
Hawaii non profit corporation; ROYAL
HAWAIIAN ACADEMY OF
TRADITIONAL ARTS, a Hawaii non-
profit corporation,

Plaintiffs - Appellees,

v.

HUI MALAMA I NA KUPUNA O
HAWAI'I NEI, a Hawaii non-profit
corporation,

Defendant - Appellant,

BISHOP MUSEUM, a Hawaii non-profit
corporation,

Defendant - Appellee.

No. 05-16721

D.C. No. CV-05-00540-DAE

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Argued and Submitted December 6, 2005

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

San Francisco, California

Before: TROTT, T.G. NELSON, and PAEZ, Circuit Judges.

Defendant-Appellant Hui Malama I Na Kupuna O Hawai‘i Nei (“Hui Malama”) appeals an order of the district court granting Plaintiffs Na Lei Alii Kawanakoa and Royal Hawaiian Academy of Traditional Arts’s (collectively “Plaintiffs”) motion for a preliminary injunction. The injunction requires Hui Malama to return certain funerary objects to Defendant-Appellee Bishop Museum, or to cause them to be returned to the museum. We stayed the injunction pending the outcome of this interlocutory appeal. We have jurisdiction pursuant to 28 U.S.C. § 1292 and we affirm the district court and vacate the stay.

We review for abuse of discretion a district court’s order granting a preliminary injunction. *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc). Our review is “limited and deferential.” *Id.* The district court abuses its discretion when it applies an incorrect legal standard, misapprehends the law in its initial assessment of the merits of the case, or relies on clearly erroneous findings of fact. *Caribbean Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 673 (9th Cir. 1988). “Absent one of these errors, the district court’s decision will not be reversed merely because the appellate court would have

arrived at a different result if it had initially applied the law to the facts of the case.” *Id.*

“A preliminary injunction is appropriate where plaintiffs demonstrate either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in [their] favor.” *Sw. Voter*, 344 F.3d at 917 (internal quotation omitted) (alteration in original). “The district court must also consider whether the public interest favors issuance of the injunction.” *Id.*

The district court properly applied this legal standard. In its Order Granting Plaintiffs’ Motion for a Preliminary Injunction, the court found “that Plaintiffs have raised serious questions as to whether a violation of the Native American Graves Protection and Repatriation Act has occurred, and that there is a great risk of irreparable harm to the [funerary objects], tipping the balance of hardships sharply in Plaintiffs’ favor.” The court also concluded “that the interests of justice and the public would be best served by bringing the items back to a secure location at the Bishop Museum during the pendency of this matter.” These findings are supported by the record and are not clearly erroneous. Because the district court neither applied an incorrect legal standard, misapprehended the law, nor relied on

clearly erroneous findings of fact, it did not abuse its discretion in granting the preliminary injunction.

We **AFFIRM** the district court's order granting a preliminary injunction. We also **VACATE** the stay order issued by this court on September 20, 2005.